REMARKS/ARGUMENTS

In response to the Restriction Requirement of October 6, 2004, applicants by their attorney elect Group I, consisting of claims 1-13, 15-23, 26 and 27, with traverse. As the ultimate species, applicants select compound E5A 29, shown bridging the pages 26 and 27. The generic formula is found in newly submitted claim 33 and the species in newly submitted claim 34. Applicants reserve the right to rejoinder of species with allowable genus claims, and the right to present linking claims under MPEP 809.03.

The Restriction Requirement is based on claims 1-32. As noted by the Examiner, there was an inadvertent typographical error causing repetition of claims 5-14. For the convenience of the Examiner, Applicants will utilize the same numbering used by the Examiner. The listing of claims therefore renumbers the claims in accordance with the Examiner's de facto amendment and cancels the inadvertent duplication.

Newly submitted claims 33 and 34 find support in original claim 1 and on page 27, respectively.

All of the claims are predicated on the discovery that there is a modulating sequence present in the EPO-R to which a number of different small synthetic molecules are able to bind and modulate the activity of the EPO-R. Group is said to be unrelated to Group I under the premise that "one could modulate EPO-R activity 'present as a cell membrane component' by administering PKC inhibitors. Alternatively, the combinations of claim 1 are said to useful as molecular weight markers. Referring to the latter statement, it is submitted that the utility must be a substantial utility, mixed melting points are not considered a utility and a molecular weight marker should be similarly excluded. It is submitted that the alternative utility should be one that is not shared by substantially all substances.

As for the modulation by PKC inhibitors, it is not understood how that is relevant. The focus should be on the binding of the small molecule to the modulating sequence. With the small molecule bound to the modulating sequence, it is speculation by the Examiner that PKC inhibitors would have an effect. Without some certainty as to alternative methods for modulating a cell in which an agonist or antagonist is bound to the EPO-R, it is submitted that the Examiner has not fulfilled his burden in providing alternative compounds to achieve the subject method of Group II.

The difference between Group I and Groups II-V is that the combination is created, rather than being claimed *per se*. Thus, the products of Group I are produced by the methods of Groups III-V. Where the claims of one group are the product of the other Groups, such claims should be considered together.

Conclusion

The Examiner is respectfully requested to withdraw the restriction requirement, examine claims 1-14 and 25-34, and enter the above amendments to provide claims directed to the specific species that has been elected. If the Examiner believes that the prosecution of the subject application can be expedited by a telephonic interview, the Examiner is requested to call the undersigned attorney.

Respectfully submitted,

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